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December 14, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Dear Ms. Salas:

This letter responds to Alltel Corporation's December 7, 2001 ex parte notice in the referenced proceeding. The only issue Alltel addresses is the signal strength Gulf carriers are permitted at the coastline under the status quo following a court remand of 1994 rules.

The remanded rules defined Gulf Carriers' Cellular Geographic Service Areas (CGSAs) in terms of Service Area Boundaries (SABs) as calculated by the formula contained in Section 22.911(a)(2) that yields a 28 dbu signal strength at the coastline. The Section 22.911(a)(2) formula was adopted in the Commission's *Third Report and Order* in Docket 90-6.¹ The appeals court in 1994 vacated and remanded Section 22.911(a) in its entirety.² The court did not vacate the rule in part by preserving the 28 dbu formula contained in Section 22.911(a)(2) as Alltel claims. Rather, the court did the logical thing: it vacated and remanded the entire rule that included defining Gulf carriers' CGSAs by SAB contours and the contour formula used for that purpose. In response, consistent with the court's decision, the Commission adopted a Note to Section 22.911(a):

NOTE: On May 13, 1994, the United States Court of Appeals for the District of Columbia Circuit instructed the FCC to vacate the provisions of old §22.903(a), now §22.911(a), insofar as they apply to cellular systems licensed to serve the Gulf of Mexico MSA (GMSA), pending reconsideration of an issue remanded to the FCC in that decision. See *Petroleum Communications, Inc. v. Federal Communications Commission*, No. 92-1670 and *RVC Services, Inc., D/B/A Coastel Communications Company v. Federal Communications*, No. 93-1016, ___ F2d ___, ___ (DC Cir 1994). Accordingly, notwithstanding the provisions of §22.911(a), until further notice, the authorized CGSAs of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993.

¹See Amendment of Part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 7 FCC Rcd 7183 (1992) ("*Third Report and Order*").

²*Petroleum Comms., Inc. v. FCC*, 22 F.3d 1165 (D.C. Cir. 1994).

That the second sentence of the Note speaks to “authorized CGSAs” without specific reference to the contour formula rule does not alter the fact that the *Third Report and Order* was vacated and remanded in its entirety as acknowledged in the first sentence of the Note. The status quo rules, i.e., those existing prior to the January 11, 1993 effective date of the *Third Report and Order*, give the Gulf carriers the right to have a 39 dbu signal strength at the coastline boundary.³ It is simply incorrect, as a matter of law, to hold that Gulf Carriers are subject to the 28 dbu signal strength rule following the court’s remand.

The more important issue is what signal strength the Gulf Carriers should be permitted in the scenario where their CGSAs are not defined by SAB contours. A 28 dbu signal strength rule helped Gulf Carriers deal with the deleterious effects of the “move it you lose it rule” by giving them a larger “footprint” by which to protect their CGSA with calculated SBA contours. However, if their CGSAs are not being defined by SAB contours, a 28 dbu signal strength rule provides no benefit to Gulf Carriers; rather, it puts them at a disadvantage by allowing land carriers to have a stronger signal at the coastline and capture their subscribers across the boundary. A rule giving one carrier a stronger signal strength at the boundary than its neighbor runs counter to the foundation of the Commission’s cellular licensing rule and policies. US Cellular and PetroCom – two carriers both with a long history of cellular operations and “good neighbor” relations – agree with each other that there should be an equal 32 dbu signal strength rule for both sides.

Alltel once also agreed with an equal 32 dbu signal strength rule. It gives no good reason for abandoning that position now. Other land carriers have been silent. For all the foregoing reasons, the Commission should adopt an equal 32 dbu signal strength rule for the Gulf carriers.

Sincerely,



Richard S. Myers
Jay N. Lazrus
Attorneys for Petroleum Communications, Inc.

³The Commission’s decision to replace the 39 dbu signal strength rule with a 32 dbu signal strength rule applied only to land-based carriers when it was adopted. At that time, the Commission decided it would deal with Gulf carriers separately, leading to the *Third Report and Order*. See Amendment of Part 22 of the Commission’s rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, *Second Report and Order*, 7 FCC Rcd 2449 at ¶13 (1992). Once the *Third Report and Order* was vacated and remanded, the only signal strength rule currently applicable to Gulf Carriers as a matter of law is the 39 dbu rule, i.e., the rule that existed as of January 11, 1993.

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